

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

Form To Be Used By A Prisoner in Filing a Complaint
Under the Civil Rights Act, 42 U.S.C. § 1983

DONALD WAYNE HEROD #1538539

Plaintiff's name and ID Number

MCCONNELL UNIT

3001 S. EMILY DR. BEEVILLE, TX. 78002

Place of Confinement

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MAY 07 2014
BY DAVID J. MALAND, CLERK
DEPUTY

CASE NO: _____

(Clerk will assign the number)

v. UNIVERSITY OF TEXAS MEDICAL BRANCH

301 UNIVERSITY BLVD, GALVESTON, TX, 77555-1007

Defendant's name and address

WARDEN BELL

9665 PRISON RD. #1 LOVELAND, TX, 75851

Defendant's name and address

RICK THALER, DIRECTOR, T.D.C.J.-C.I.D.,
P.O. BOX 99, HUNTSVILLE, TX 77342-0099

Defendant's name and address

(DO NOT USE "ET AL.")

9:14cv69 ZH

INSTRUCTIONS - READ CAREFULLY

NOTICE:

Your complaint is subject to dismissal unless it conforms to these instructions and this form.

1. To start an action you must file an original and one copy of your complaint with the court. You should keep a copy of the complaint for your own records.
2. Your complaint must be legibly handwritten in ink, or typewritten. You, the plaintiff, must sign and declare under penalty of perjury that the facts are correct. If you need additional space, **DO NOT USE THE REVERSE SIDE OR BACK SIDE OF ANY PAGE.** ATTACH AN ADDITIONAL BLANK PAGE AND WRITE ON IT.
3. You must file a separate complaint for each claim you have unless the various claims are all related to the same incident or issue or are all against the same defendant, Rule 18, Federal Rules of Civil Procedure. Make a short and plain statement of your claim, Rule 8, Federal Rules of Civil Procedure.
4. When these forms are completed, mail the original and one copy to the Clerk of the United States Court for the appropriate District of Texas in the Division where one or more named defendants are located, or where the incident giving rise to your claim for relief occurred. The list labeled as "VENUE LIST" is posted in your unit law library. It is a list of Texas prison units indicating the appropriate District Court, the Division and an address of the Divisional Clerks.

FILING FEE AND IN FORMA PAUPERIS

1. In order for your complaint to be filed, it must be accompanied by the filing fee of \$350.00.
2. If you do not have the necessary funds to pay the filing fee in full at this time, you may request permission to proceed *in forma pauperis*. In this event you must complete the application to proceed *in forma pauperis* (IFP), setting forth the information to establish your inability to prepay the fees and costs or give security therefore. You must also include a six (6) month history of your Inmate Trust Account. You can acquire the application to proceed IFP and appropriate Inmate Account Certificate from the law library at your prison unit.
3. 28 U.S.C. 1915, as amended by the Prison Litigation Reform Act of 1995 (PLRA), provides, "...if a prisoner brings a civil action or files and appeal *in forma pauperis*, the prisoner shall be required to pay the full amount of a filing fee." Thus, the Court is required to assess and, when funds exist, collect, the entire filing fee or an initial partial filing fee and monthly installments until the entire amount of the filing fee has been paid by the prisoner. If you submit the application to proceed *in forma pauperis*, the Court will apply 28 U.S.C. 1915 and, if appropriate, assess and collect the entire filing fee or an initial partial filing fee, then monthly installments from your Inmate Account, until the entire \$350 filing fee has been paid.
4. If you intend to seek *in forma pauperis* status, then do not send your complaint without an Application to Proceed IFP, and the Certificate of Inmate Trust Account. Complete all the essential paperwork before submitting it to the Court.

CHANGE OF ADDRESS

It is your responsibility to inform the Court of any change of address and its effective date. Such notice should be marked "NOTICE TO THE COURT OF CHANGE OF ADDRESS" and shall not include any motions(s) for any other relief. Failure to file a NOTICE TO THE COURT OF CHANGE OF ADDRESS may result in the dismissal of your complaint pursuant to Rule 41(b), Federal Rules of Civil Procedures.

I. PREVIOUS LAWSUITS:

- A. Have you filed any other lawsuits in the state or federal court relating to imprisonment? ? YES ✓ NO NONE THAT I NOOF
- B. If your answer to "A" is yes, describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, giving the same information.)
 1. Approximate date of filing lawsuit: AUGUST, 2012
 2. Parties to previous lawsuit:
 - Plaintiff(s): DONALD WAYNE HEROD #1538539
 - Defendant(s): RICK THALER, DIRECTOR, T.D.C.J. - C.J.D.
 3. Court (If federal, name the district; if state, name the county) SOUTHERN DISTRICT OF TEXAS
 4. Docket Number: CIVIL ACTION NO. H-12-3267
 5. Name of judge to whom case was assigned: NANCY F. ATLAS
 6. Disposition: (Was the case dismissed, appealed, still pending?)
DISMISSED
 7. Approximate date of disposition: NOVEMBER 2012

I. PREVIOUS LAWSUITS:

1. APPROXIMATE DATE OF FILING LAWSUIT:
JUNE OR JULY OF 2010
2. PARTIES TO PREVIOUS LAWSUIT:
PLAINTIFF: DONALD WAYNE HEROD
DEFENDANT: RICK THALER
3. COURT: SOUTHERN DISTRICT OF TEXAS
4. DOCKET NUMBER: H-11-2440
5. NAME OF JUDGE TO WHOM CASE WAS ASSIGNED:
ROSENTHAU
6. DISPOSITION: DISMISSED
7. APPROXIMATE DATE OF DISPOSITION:
JULY, 2012

I PREVIOUS LAWSUITS:

1. APPROXIMATE DATE OF FILING LAWSUIT:
OCTOBER 2013
2. PARTIES TO PREVIOUS LAWSUIT:
PLAINTIFF: STATE OF TEXAS
DEFENDANT: DONALD WAYNE HEROD
3. 339TH DISTRICT COURT OF HARRIS COUNTY,
4. WR-69,858-15 #1152281-C
5. NAME OF JUDGE TO WHOM CASE WAS ASSIGNED:
?
6. DISPOSITION: DISMISSED WITHOUT WRITTEN ORDER
7. JANUARY, 2014

I. PREVIOUS LAWSUITS:

1. APPROXIMATE DATE OF FILING LAWSUIT:

JULY, 2012

2. PARTIES TO PREVIOUS LAWSUIT:

PLAINTIFF: THE STATE OF TEXAS

DEFENDANT: DONALD WAYNE HERON

3. COURT: 339TH DISTRICT COURT OF HARRIS COUNTY

4. 1152281-B

5. NAME THE JUDGE TO WHOM CASE WAS ASSIGNED:

?

6. DISPOSITION: DISMISSED WITHOUT WRITTEN ORDER

7. SEPTEMBER, 2012

I PREVIOUS LAWSUITS:

1. APPROXIMATE DATE OF FILING LAWSUIT:

DECEMBER, 2010

2. PARTIES TO PREVIOUS LAWSUIT:

PLAINTIFF: THE STATE OF TEXAS

DEFENDANT: DONALD WAYNE HERON

3. COURT: 339TH DISTRICT COURT OF HARRIS COUNTY

4. 1152281-A

5. NAME OF JUDGE TO WHOM CASE WAS ASSIGNED:

?

6. DISPOSITION: DISMISSED WITHOUT WRITTEN ORDER

7. MAY, 2011

I PREVIOUS LAWSUITS:

1. APPROXIMATE DATE FILING LAWSUIT:
OCTOBER 31ST 2008
2. PARTIES TO PREVIOUS LAWSUIT:
PLAINTIFF: THE STATE OF TEXAS
DEFENDENT: DONALD WAYNE HEROD
3. COURT: 339TH DISTRICT OF COURT OF HARRIS COUNTY.
4. DOCKET NUMBER: 01-08-00908-CR, 2010 WL-
-1981577
5. NAME OF JUDGE TO WHOM CASE WAS ASSIGNED:
?
6. DISPOSITION: AFFIRMED
7. APPROXIMATE DATE OF DISPOSITION:
MAY, 2010

MCCONNELL UNIT

II. PLACE OF PRESENT CONFINEMENT: 3001 S. EMILY DRIVE, BEEVILLE, TX. 78102

III. EXHAUSTION OF GRIEVANCE PROCEDURES:

Have you exhausted both steps of the grievance procedure in this institution? ✓ YES NO

Attach a copy of the Step 2 grievance with the response supplied by the prison system.

IV. PARTIES TO THE SUIT:

A. Name of address of plaintiff: 301 UNIVERSITY BLVD. GALVESTON, TX. 77555-1007
UNIVERSITY OF TEXAS MEDICAL BRANCH
WARDEN BELL 2665 PRISON RD 1 LOVELAND, TX RICK THALER P.O. BOX 99
RICK THALER P.O. BOX 99 HUNTSVILLE TX 77342-0099

B. Full name of each defendant, his official position, his place of employment, and his full mailing address.

Defendant #1: P PERSONAL OF UTMb AT EASTHAM UNIT
2665 PRISON RD. 1 75851 BROKE BOTH OF MY SHOULDERS

Briefly describe the act(s) or omission(s) of this defendant, which you claimed harmed you.

Defendant #2: PERSONAL OF UTMb AT EASTHAM UNIT
BROKE BOTH OF MY SHOULDERS

Briefly describe the act(s) or omission(s) of this defendant, which you claimed harmed you.

Defendant #3: PERSONAL OF UTMb AT EASTHAM UNIT
BROKE BOTH OF MY SHOULDERS

Briefly describe the act(s) or omission(s) of this defendant, which you claimed harmed you.

Defendant #4: WARDEN BELL OF THE EASTHAM UNIT
ALLOWING UTMb PERSONAL TO MOLEST ME

Briefly describe the act(s) or omission(s) of this defendant, which you claimed harmed you.

Defendant #5: RICK THALER, DIRECTOR OF T.D.C.J. - C.I.D.
FOR ALLOWING UTMb PERSONAL TO MOLEST ME

Briefly describe the act(s) or omission(s) of this defendant, which you claimed harmed you.

MOLEST ME BROKE BOTH OF MY SHOULDERS

V. STATEMENT OF CLAIM:

State here in a short and plain statement the facts of your case, that is, what happened, where did it happen, when did it happen, and who was involved. Describe how each defendant is involved. You need not give any legal argument or cite any cases of statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach extra pages if necessary, but remember that the complaint must be stated briefly and concisely. IF YOU VIOLATE THIS RULE, THE COURT MAY STRIKE YOUR COMPLAINT.

ON DECEMBER 11th 2012, I BLACKED OUT LOST CONSCIOUS WHEN I WOKE UP I WAS IN A FREEWORLD HOSPITAL WITH BOTH OF MY SHOULDERS CRUSHED BEYOND REPAIR! I DO HAVE AN AFFIDAVIT FROM A ROOMMATE, AND HE TOLD ME MY SHOULDERS WERE NOT BROKE WHILE I WAS IN 5 DORM, MEDICAL (UTMB) PERSONAL CAME AND LOADED ME UP ONTO A BACKBOARD AND PLACED ME ON A GURNIE AND TOOK ME AWAY! I WAS IN UTMB PERSONAL CARE WHEN MY SHOULDERS WERE BROKE, THEY ARE LIBEL AS WELL AS WARDEN BELL OF EASTHAM UNIT AND RICK THALER THE DIRECTOR OVER THE PRISON SYSTEM

VI. RELIEF: State briefly exactly what you want the court to do for you. Make no legal arguments. Cite not cases or statutes.

MONEY FOR THE PAIN AND SUFFERING AND A HEALTH CARE FOR THE FUTURE FOR TREATMENT AND MEDICAN IN THIS ONGOING THING

VII. GENERAL BACKGROUND INFORMATION:

A. State, in complete form, all names you have ever used or been known by including any and all aliases:

DONALD WAYNE HEROD

B. List all TDCJ-ID identification numbers you have ever been assigned and all other state or federal prison or FBI numbers ever assigned to you, if know to you.

#1538539, #1042931, #160440, #SID 03095087, SS. 459-19-8251

VIII. SANCTIONS:

A. Have you been sanctioned by any court as a result of any lawsuit you have filed? ☐ YES ☒ NO

B. If your answer is "yes", give the following information for every lawsuit in which sanctions were imposed. (If more than one, use another piece of paper and answer the same questions.)

1. Court that imposed sanctions (If federal, give district and division): N/A
2. Case Number: N/A
3. Approximate date sanctions were imposed: N/A
4. Have the sanctions been lifted or otherwise satisfied? N/A YES ☐ NO ☒

- C. Has any court ever warned or notified you that sanctions could be imposed? YES ☒ NO
- D. If your answer is "yes", give the following information for every lawsuit in which warning was imposed. (If more than one, use another piece of paper and answer the same questions.)

1. Court that imposed warning (if federal, give the district and division): N/A
2. Case number: N/A
3. Approximate date warning were imposed: N/A

Executed on: 5/5/14
(Date)

DONALD WAYNE HEROD #1538539
(Printed Name)

Donald Wayne Herod
(Signature of Plaintiff)

PLAINTIFF'S DECLARATIONS

- I declare under penalty of perjury all facts presented in this complaint and attachment thereto are true and correct.
- I understand if I am released or transferred, it is my responsibility to keep the Court informed of my current mailing address and failure to do so may result in the dismissal of this lawsuit.
- I understand that I must exhaust all available administrative remedies prior to filing this lawsuit.
- I understand I am prohibited from bringing an *in forma pauperis* lawsuit if I have brought three or more civil actions in a Court of the United States while incarcerated or detained in any facility, which lawsuits are dismissed on the ground they were frivolous, malicious, or failed to state a claim upon which relief may be granted, unless I am under imminent danger or serious physical injury.
- I understand even if I am allowed to proceed without prepayment of costs, I am responsible for the entire \$350 filing fee and costs assessed by the Court, which shall be deducted in accordance with the law from the inmate account by my custodian until the filing fee is paid.

Signed this 5th day of MAY, 20 14.
(Day) (Month) (Year)

DONALD WAYNE HEROD #1538539
(Printed Name)

Donald Wayne Herod
(Signature of Plaintiff)

WARNING: The Plaintiff is hereby advised any false or deliberately misleading information provided in response to the following questions will result in the imposition of sanctions. The sanctions the Court may impose include, but are not limbed to monetary sanctions and/or the dismissal of this action with prejudice.

Affidavit

On December 11th 2012, I was present the day Mr. Donald Wayne Harod had a blackout. I lived in 5 Dorm 56 Bunk/cubical, Mr. Harod lived in cubical 44 directly behind mine. Mr. Harod started complaining about his health to me and numerous inmates that were present Dec. 11, 2012. We then walked to Mr. Harod's cubical where his health appeared to be in critical condition. We then informed Mr. Harod to lay down and wait for medical personal, I then observed as Mr. Harod appeared to pass out, where he became unresponsive and remained unconscious. Mr. Harod remained on his bed up until medical personal came and carried him away. And to the best of my knowledge Mr. Harod never suffered any blunt force trauma to any part of his body including his shoulders. Signed on this day 11th of November, 2013.

Respectfully Submitted

Jesus M. Navarrette # 1765684

~~Jesus m. Navarrette~~ 11-11-13

J-1-1-02B: Housing

Estelle Unit

J-1-1-02B

264 F.M 3478

Huntsville, TX, 77320-

3322

Inmate's Unsown Declaration

I Jesus M. Navarrette, being presently incarcerated in the Texas Department of Criminal Justice - Institution Division at the Estelle Unit in Huntsville, Texas, Declare under the Penalty of Perjury that the facts stated in this instrument are True and Correct.

Executed on this 11th day of November 2013

Respectfully Submitted

Jesus M. Navarrette

~~Jesus M. Navarrette~~

TDCJ# 1765684

Housing: JH-02B

Estelle Unit

264 F.M 3478

Huntsville, TX. 77320 -

3322



Texas Department of Criminal Justice

STEP 1

OFFENDER GRIEVANCE FORM

OFFICE USE ONLY

Grievance #: 2014072103Date Received: RECEIVED JAN 06 2014Date Due: 2-15-14Grievance Code: 9011Investigator ID #: I1761

Extension Date: _____

Date Retd to Offender: RECEIVED FEB 16 2014

Offender Name: DONALD WAYNE HEROD TDCJ # 1538539
 Unit: E5111E Housing Assignment: J1-1-104
 Unit where incident occurred: EASTHAM

You must try to resolve your problem with a staff member before you submit a formal complaint. The only exception is when appealing the results of a disciplinary hearing.

Who did you talk to (name, title)? OFFENDER GRIEVANCE PROGRAM When? 12-26-13

What was their response? WHAT IS THE GRIEVANCE

What action was taken? NONE

State your grievance in the space provided. Please state who, what, when, where and the disciplinary case number if appropriate

ON NOVEMBER 8th 2013 I MAILED THE OFFENDER GRIEVANCE PROGRAM
 P.O. BOX 99, HUNTSVILLE, TX, 77342-0099, MY STEP 1 STAPLED TO MY
 STEP 2 GRIEVANCE! I MAILED THEM A LETTER ON DECEMBER 26th 2013
 ASKING THEM WHAT HAD BECOME OF MY STEP 2 AND THEIR REPLY
 WAS WHAT IS THE GRIEVANCE! NOW THIS HAS TO DO WITH MY SHOULDERS
 CRUSHED WHILE I WAS IN CARE OF MEDICAL PERSONAL ON THE EASTHAM
 UNIT TO WHICH WARDEN BELL OF THE EASTHAM UNIT AS WELL AS
 RICK THALER, DIRECTOR, OF TEXAS DEPARTMENT OF CRIMINAL JUSTICE
 - INSTITUTIONAL DIVISION IS A PART OF MY STEP 1 AND STEP 2
 FOR NOT PROTECTING ME AGAINST THE ACTIONS THE MEDICAL PERSONAL
 (UTMB) EMPLOYEES DID AGAINST ME!

RECEIVED JAN 06 2014

Action Requested to resolve your Complaint.

I would like an answer back on my step 2 I mailed NOV. 8th 2013Offender Signature: Donald Wayne MerozDate: 1-3-14

Grievance Response:

Your complaint was noted. ACCORDING TO YOUR GRIEVANCE SCREEN NO STEP II WAS EVER ACCEPTED. THE GRIEVANCE 2014039948 WAS SCREENED AT STEP I. NO FURTHER ACTION WARRANTED.

Signature Authority: [Signature]

Warden Brewer

Date: 2/13/14

If you are dissatisfied with the Step 1 response, you may submit a Step 2 (I-128) to the Unit Grievance Investigator within 15 days from the date of the Step 1 response. State the reason for appeal on the Step 2 Form.

Returned because: *Resubmit this form when the corrections are made.

- ☐ 1. Grievable time period has expired.
- ☐ 2. Submission in excess of 1 every 7 days. *
- ☐ 3. Originals not submitted. *
- ☐ 4. Inappropriate/Excessive attachments. *
- ☐ 5. No documented attempt at informal resolution. *
- ☐ 6. No requested relief is stated. *
- ☐ 7. Malicious use of vulgar, indecent, or physically threatening language. *
- ☐ 8. The issue presented is not grievable.
- ☐ 9. Redundant, Refer to grievance # _____
- ☐ 10. Illegible/Incomprehensible. *
- ☐ 11. Inappropriate. *

UGI Printed Name/Signature: _____

Application of the screening criteria for this grievance is not expected to adversely affect the offender's health.

Medical Signature Authority: _____

I-127 Back (Revised 11-2010)

OFFICE USE ONLY

Initial Submission UGI Initials: _____

Grievance #: _____

Screening Criteria Used: _____

Date Recd from Offender: _____

Date Returned to Offender: _____

2nd Submission UGI Initials: _____

Grievance #: _____

Screening Criteria Used: _____

Date Recd from Offender: _____

Date Returned to Offender: _____

3rd Submission UGI Initials: _____

Grievance #: _____

Screening Criteria Used: _____

Date Recd from Offender: _____

Date Returned to Offender: _____



Texas Department of Criminal Justice
STEP 2
OFFENDER
GRIEVANCE FORM

Offender Name: DONALDWAYNE HEROD TDCJ # 1538539
 Unit: ESTELLE Housing Assignment: 1F-104 4D-2B
 Unit where incident occurred: EASTHAM UNIT

OFFICE USE ONLY

Grievance #: 2014072103
 UGI Recd Date: MAR 06 2014
 HQ Recd Date: MAR 11 2014
 Date Due: 4/10/14
 Grievance Code: 904
 Investigator ID #: 1975
 Extension Date: _____

You must attach the completed Step 1 Grievance that has been signed by the Warden for your Step 2 appeal to be accepted. You may not appeal to Step 2 with a Step 1 that has been returned unprocessed.

Give reason for appeal (Be specific). I am dissatisfied with the response at Step 1 because...

I'm NOT SATISFIED! I'm in PAIN ALL OF THE TIME, I do NOT HAVE ALL OF my MOVEMENT BACK IN my ARMS, THIS IS AN ONGOING PROBLEM AND I'm SEEKING MONETARY DAMAGES AS WELL A HEALTH CARE PACKAGE DEALING WITH my SHOULDERS THAT THE JOINTS had TO BE REPLACED IN 2013 MY SHOULDERS WERE CRUSHED WHILE I WAS UNCONSCIOUS AND IN THE CARE "HANDS" OF MEDICAL STAFF "UTMB" EMPLOYEES, AND BECAUSE THIS WAS DONE IN THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE - INSTITUTIONS DIVISION ON THE EASTHAM UNIT WARDEN BELL AS WELL AS RICK THALER, DIRECTOR, OF T, D, C, J IS ALSO LIABLE FOR my PAIN AND SUFFERING THATS STILL going ON! I WANT TO MEAT WITH SOMEONE WHO WILL NEGOTIATE FOR ME!

Offender Signature: Donald Wayne Herod #1538539Date: 2-28-14

Grievance Response:

An investigation has been conducted into your complaint and found that your step one response was appropriate. No further action is warranted.

Signature Authority:

B. PARKER

Date:

MAR 12 2014

MAR 12 2014

Returned because: **Resubmit this form when corrections are made.*

- ☐ 1. Grievable time period has expired.
- ☐ 2. Illegible/Incomprehensible. *
- ☐ 3. Originals not submitted. *
- ☐ 4. Inappropriate/Excessive attachments. *
- ☐ 5. Malicious use of vulgar, indecent, or physically threatening language.
- ☐ 6. Inappropriate. *

CGO Staff Signature: _____

OFFICE USE ONLY**Initial Submission**

CGO Initials: _____

Date UGI Recd: _____

Date CGO Recd: _____

(check one) ☐ Screened ☐ Improperly Submitted

Comments: _____

Date Returned to Offender: _____

2nd Submission

CGO Initials: _____

Date UGI Recd: _____

Date CGO Recd: _____

(check one) ☐ Screened ☐ Improperly Submitted

Comments: _____

Date Returned to Offender: _____

3rd Submission

CGO Initials: _____

Date UGI Recd: _____

Date CGO Recd: _____

(check one) ☐ Screened ☐ Improperly Submitted

Comments: _____

Date Returned to Offender: _____

DONALD WAYNE HEROD #1538539
MC CONNELL UNIT
3001 S. EMELY DRIVE
BEEVILLE, TX, 78102

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS
104 N. THIRD STREET
LUFKIN, TX 75901

